



NHDES

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



April 24, 2003

Mr. Reginald Lyons
P.O. Box 338
Antrim, NH 03440

NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 2000-003 (WETLANDS)

Dear Mr. Lyons:

As you are aware, by Notice of Proposed Administrative Fine No. AF 2000-003 issued February 23, 2000, the Water Division sought administrative fines totaling \$2,000 against you for alleged violations of RSA 482-A, the state wetlands statute, arising from unauthorized work conducted on property located off Bennington Road, Route 137, Hancock, NH. ("the Property"). Pursuant to RSA 482-A:13, and based upon my review of the evidence presented at the hearing held on this matter on June 5, 2000, I have concluded that a fine of \$2,000 is appropriate as set forth below:

- ▶ A fine in the amount of \$2,000 is imposed against you for rutting through wetlands and seasonal streams without proper crossing devices, for failing to use appropriate erosion control devices on skid trails and truck roads, and for failing to use pole fords or other crossing devices at all stream crossings.

The \$2,000 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Wetlands are regulated under RSA 482-A. The purpose of this statute is to protect wetlands from unregulated alteration because the state recognizes that these areas are a valuable resource that provide wildlife habitats, storm water retention, water supplies, and nutrient and pollutant filtering. There are many types of wetlands in New Hampshire: swamps, bogs, wet meadows, rivers, and lakes. Under the statute, specific areas of the Property are considered wetlands and are under wetlands jurisdiction. You are liable for unauthorized work in wetlands on the Property, hence, negatively impacting the wetlands and the environment.

This decision is based on the following findings and conclusions:

1. On April 6, 1999, Terry Schnare and Reginald Lyons, partners in Open View Investments, LLC, ("Open View"), filed a Notice of Intent to Cut Wood or Timber ("the Notice") on a lot located off Bennington Road, Route 137, Hancock, NH and more particularly described in the Town of Hancock tax maps as Map R-9, Lot 19-A ("the Property").
2. Mr. Lyons signed the Notice as the logger for the Property.
3. RSA 482-A:3, I prohibits the excavation, removal, fill, dredge, or construction of any structures in or on any bank, flat, marsh, or swamp in or adjacent to any waters of the state without first obtaining a permit from DES.

4. On June 6, 1999, the Department of Resources and Economic Development issued a Cease and Desist Order ("the Order") to Mr. Schnare and Open View for skidding through wetlands without a proper stream crossing device. The Order directed the logger to file a wetlands permit and cease further logging operations until proper wetland crossing devices had been installed.
5. On July 21, 1999, DES inspected the Property and observed that the logger had rutted through wetlands and seasonal streams without crossing devices in place, failed to use appropriate erosion control devices on skid trails, and failed to use pole fords at stream crossings.
6. Wt 304.05(b) requires that skid trails and truck roads on logging operations be laid out using appropriate erosion control devices, pursuant to the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April, 1996 ("the Manual").
7. Wt 304.05(c) requires culverts, bridges, pole fords, or other crossings devices be installed on skid trails and temporary truck roads at all stream crossings pursuant to the Manual.
8. Mr. Lyons violated RSA 482-A by rutting through wetlands and seasonal streams without proper crossing devices, by failing to use appropriate erosion control devices on skid trails and truck roads, and by failing to use pole fords or other crossing devices at all stream crossings.
9. For a violation of RSA 482-A, repealed rule Wt 802.04(a)(4) authorized a fine of \$2,000. Under the current rules, Env-C 614.06 authorizes a fine of \$2,000.
10. None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violation noted in # 8 above.

You violated RSA 482-A by conducting unauthorized work in wetlands on the Property without first obtaining a permit from DES. Thus, for the reasons discussed above, I have concluded that the \$2,000 fine imposed against you is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with RSA 541 and Env-C 206.

Very truly yours,

COPY
Robert Monaco
Acting Commissioner

Enclosure

cc: Board of Selectmen, Town of Hancock
Conservation Commission, Town of Hancock
Harry T. Stewart, P.E., Director, Water Division
Jennifer Patterson, DOJ/EPB
Mark Harbaugh, Enforcement Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney
Marjory Swope, NHACC

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99